IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-905

MARY COX, as Administratrix of the Goods, Chattels and Credits of Bobby Cox, deceased,

Petitioner.

v.

ADMINISTRATOR OF THE VETERANS ADMINISTRATION, VETERANS ADMINISTRATION, UNITED STATES OF AMERICA,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

GERALD MURRAY
Counsel for Petitioner

Office & P.O. Address
90-61 Sutphin Boulevard
Jamaica, N. Y. 11435

INDEX

CITATIONS

Cases:

Statutes and Regulations:

Miscellaneous:

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. .....

MARY COX, as Administratrix of the Goods, Chattels and Credits of Bobby Cox, deceased,

Petitioner,

v.

ADMINISTRATOR OF THE VETERANS ADMINISTRATION, VETERANS ADMINISTRATION, UNITED STATES OF AMERICA,

Respondents.

The Petitioner prays that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Second Circuit entered in the above case on September 30th, 1977.

OPINIONS BELOW

The District Court rendered its findings of fact and conclusions of law in open court at the conclusion of trial. The findings of fact and conclusions of law are reprinted in the Appendix at pp. 1 A through 12 A. There were no opinions rendered by the Court of Appeals for the Second Circuit; the affirmance by the Court of Appeals of the decision of the District Court is unreported.

JURISDICTION

The judgments of the Court of Appeals for the second Circuit were made and entered on September 30th, 1977, and copies thereof are appended to this petition in the Appendix at p. 13 A. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

Whether the trial court's lack of clarity in refusing to credit a party's testimony for reasons of demeanor, and weakly controverted by general statements of a procedure, should result in the setting aside of baseless, crucial findings of fact as clearly erroneous? The court below affirmed.

Whether the judiciary should be held to the same high standards of administrative officers, and specifically, in expressing clear and convincing reasons for choosing to credit or discredit a party's testimony?

STATUTES, FEDERAL RULES AND REGULATIONS INVOLVED

The pertinent portions of Rule 52(a) of the Federal Rules of Civil Procedure, 5 U.S.C. sec. 557(c) (3) (A).

STATEMENT

This suit for wrongful death under the Federal Torts Claims Act, 28 U.S.C., sections 1346(b), 2671, et seq. was brought by Mary Cox McNeil, the administratrix of the estate of Bobby Cox, her brother, who committed suicide on October 12th, 1972 in North Carolina.*

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*-The Veterans Administration and its administrator were named as defendants in the complaint. In the Pre-Trial Order, the pleadings were amended to delete the Administrator

Mrs. McNeil claimed that the deceased's suicide was proximately caused by the negligence of the Veterans Administration Hospitals in New York City and Fayetteville, North Carolina in permitting Mr. Cox, a psychiatric patient, to discharge himself against medical advice in late August 1972, and in later refusing him readmission to the Veterans Administration Hospital in New York City on September 20th, 1972.

The psychiatric history of the deceased dates back to his discharge from the Armed Forces in which he served from 1965 to 1967. Suffering from depression, schizophre..ia, and auditory hallucinations, he was brought to the Veterans Administration Hospital in New York City by the plaintiff on September 20th, 1968.

Following repeated attempts to leave the hospital, and twice trying to escape through windows from the 16th floor ward, he was given shock therapy, and released on February 20th, 1969 after his condition showed great improvement.

Mr. Cox was readmitted to the New York Hospital on March 2nd, 1970 where, as on his first stay, he made several efforts to leave the hospital. He was released on March 30th, 1970.

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*-of the Veterans Administration and the Veterans Administration as defendants.

-The caption was not changed to reflect Mrs. McNeil's married name.

On July 19th, 1972 after a somewhat more mild recurrence of the condition suffered in 1968 and 1970, the deceased was again admitted to the hospital, but was permitted to leave on occasion, to visit with his sister. On August 14th, 1972, after returning late from one of those visits, he insisted upon leaving the hospital and finally was allowed to leave against medical advice after signing a statement, a copy of which can be found in the Appendix at p. 15A, that he understood he could not be readmitted for ninety days.

Within the week, the deceased visited his mother in North Carolina where his unstable condition continued, compelling his mother to admit him to the Veterans Administration Hospital in Fayetteville on August 20th, 1972. Mr. Cox was irregularly discharged the next day against medical advice.

The basis of contention revolves around the events occuring between the time of the deceased's discharge on August 21st, 1972 from the North Carolina Hospital and his suicide on October 12th, 1972. The plaintiff's sworn testimony before Judge Edward Weinfeld of the District Court was that her brother, the deceased, returned to New York on September 19th, 1972 for medical attention; that she took him to the Veterans Administration Hospital for treatment on the 20th;that Mr. Cox was never examined by a physician on this visit; and that they were informed by a clerk who retrieved Mr. Cox's records that Mr. Cox could not be readmitted because of a hospital rule forbidding the readmission ofa patient who had signed outagainst medical advice within the previous ninety days.

The Government contested this testimony by showing the absence of any notation of such a visit in Mr. Cox's hospital records, and producing the Chief of Medical

Administrative Services at the hospital, Peter Pascarelli, who testified that in September, 1972 the ninety-day exclusion rule was no longer in effect, that every patient who came to the hospital was examined by a nurse and a doctor.

Judge Weinfeld, in rendering judgment in favor of the defendant, discredited the plaintiff's testimony concerning the disputed visit of September 20th, 1972, stating as follows:

> In order to credit the plaintiff's testimony, the Court would have to believe that on this occasion the staff of the Veterans Administration Hospital failed to follow every step of the prescribed procedure. Based upon the demeanor of witnesses and all relevant evidence, the Court finds that plaintiff has failed to sustain her burden of proof that the decedent Cox, accompanied by her, sought admission to the Veterans Administration Hospital in New York City on September 20th, 1972. (7 A).

The court never addressed itself in its findings of fact to the inconsistency between Mr. Pascarelli's testimony that the ninety-day rule was not in effect in 1972 and the deceased being required prior to his irregular discharge on August 14th, 1972 to sign a statement indicating he could not be readmitted for ninety days from date of discharge. The court, also, neither explained nor clarified its concern with the demeanor of the witnesses, although apparently placing considerable weight on this factor in reaching crucial findings of fact.

The Court of Appeals affirmed with no opinion.

REASONS FOR GRANTING THE WRIT

The decision of the court below, in affirming and, thereby, acquiescing to the findings of the District Court involves a direct conflict with decisions of the Courts of Appeals in other circuits.

1. Specifically, we are concerned with the District Court's finding that the plaintiff and the decedent did not seek admission to the Veterans Administration Hospital in New York City on the 20th day of September, 1972. Since this is an action for wrongful death, and the deceased committed suicide almost three weeks to the day after this contested visit, the question of whether there wasan attempt to admit Bobby Cox to the hospital where,the plaintiff testifies, he was neither examined by a physician nor allowed admission due to a ninety-day exclusion rule, takes on added signifigance.

The District Court placed much reliance on the faith of the Chief of Administrative Services in the consistent, prescribed procedures followed by the hospital (particularly since there was no independent recollection of Cox's visit), and his belief that the ninety-day rule was not in effect as of "1970 or 1971". The Court of Appeals apparently agreed despite the holding of the Tenth Circuit in Browning vs. Crouse, 356 F. 2d 178 (10th Cir. 1966), cert denied, 384 U.S. 973.

The Browning case involved a defendant who received a habitual criminal change based on two prior felony convictions.

He petitioned on Habeas Corpus attacking the constitutionality of his second conviction on the claim he was never advised of his right to counsel. As the appellant, and clearly interested party, he testified he had not been advised of his right to counsel. In rebuttal, an affidavit of the sentencing judge was produced in which he concluded: "(I) have no independent recollection of Mr. Browning's case. It is my opinion, however, that I did advise him of his right to counsel for I can remember no case in which I did not follow such procedure." Browning, supra at 180.

The court held as follows:

"The indefinite and inconclusive showing made by the warden casts only a conjectural and insubstantial doubt on its verity. When a record fails to show affirmatively that the required safeguards are provided, their existence maynot be inferred from a general statement of a practice." Browning, supra at 180 (Emphasis added.)

The plaintiff's testimony, coming over four years since the tragic suicide, was admittedly weak in incidental specifics, but in no way offended common sense. When the witness testified to what events actually occurred on September 20th, 1972, this was controverted by testimony concerning hospital procedure normally followed. However, the existence of the prescribed procedure on the day in question may not, and should not, be infered from "general statements of a practice."

Furthermore, it is contended by the Chief of Administrative Services for the New York hospital that the deceased could not have been refused readmittance under the

ninety-day rule since that rule was not in effect in 1972. Unexplained, however, is the fact that Cox was asked to sign a statement on August 14th, 1972 acknowledging the regulation against readmittance for ninety days from the time of irregular discharge.

The District Court clearly stated in its findings as follows:

> On August 14, 1972, after returning late from one of those visits, he insisted upon leaving the hospital and finally was allowed to leave against medical advice after signing a statement that he understood he could not be readmitted for ninety days. (5 A). (Emphasis added).

A copy of the signed statement, witnessed by Dr. Jabitsky, is appended to this petition in the Appendix at p. 15 A.

Even if the plaintiff concedes that the ninety-day rule was not in effect in 1972, the very fact that Cox was asked by some staff member to sign a statement acknowledging the existence of such a rule in 1972 if proof that prescribed rules and procedures can legitimately be overlooked or not of common knowledge to all those directly involved in maintaining such procedure.

Therefore, in light of the above, the plaintiff's sworn testimony before the District Court was essentially uncontradicted.

2. This brings us to the other basis for the disputed finding by the District Court,-- "the demeanor of witnesses." (7 A).

First, there was no reason for the District Court to rely on oral findings and

conclusions announced in open court when essential facts are in dispute and the quantity of evidence is overwhelming, as in the case at bar. For this reason alone, and giving consideration to the unique circumstances of this case, the Court of Appeals should have followed the trend of other circuit courts in reprimanding the lower court for such practices:

> "It is better practice for the district court to enter its written findings of fact and conclusions of law rather than to rely on oral findings and conclusions announced in court. This procedure makes the task of appellate review easier and the district court's record on appeal much better." In re Witness Before Grand Jury vs. U.S., 546, F.2d 825, 827 (9th Cir. 1976).

Secondly, the District Court's conclusory statements regarding demeanor, upon which it based what we consider to be erroneous findings of fact, should be dismissed and the evidence considered on its own merits. (See No. 1).

There is no argument with the common practice of appellate court deference to the trial judge with respect to demeanor and credibility of witnesses. But the appellant does take exception to the unrestrained discretion of the trial judge in using the intangibles of a witness' demeanor as a shield for flawed fact-finding. Rule 52(a) of the Federal Rules of Civil Procedure provides that "(i)n all actions tried upon the facts without a jury..., the court shall find the facts specially..." (Emphasis added).

As stated by the Second Circuit in Russo vs. Cent'l Sch. Dist. No. 1, Towns of Rush, Etc., N. Y., 469 F.2d 623 (2nd Cir. 1972):

> "The need for precision and clarity in fact-finding and the use of cold conclusory statements as a shield to prevent penetrating the absence of facts is made more significant because of the 'clearly erroneous' standard, for while errors of law are always correctable by an appellate court, errors of fact rarely are, unless an applicant can scale the high wall which the standard places before him." 469 F.2d 623, 629.

Therefore, it becomes incumbent upon the trial court to clearly state its reasons for its findings, and if such findings are based on demeanor observations, then to reveal of record the criteria applied in evaluating a witness' credibility, particularly when that witness' testimony is uncontradicted.

In Broadcast Music, Inc. vs. Havana Madrid Restaurant Corp., 175 F.2d 77 (2d Cir. 1949), the Court of Appeals found that the trial judge gave sound reason for refusing to accept an interested witness' uncontroverted, but uncorroborated, testimony as true. The Court, however, expressed concern with burdensome task of the appellate courts in reviewing a trial judge's estimate of a witness' credibility:

> "Without doubt, the result of our procedure is to vest the trial judge with immense power, not subject to correction even if misused: His estimate of an orally testifying

> witness' credibility may stem from the trial judge's application of an absurd rule-of-thumb, such as that when a witness wipes his hands during his testimony, unquestionably he is lying; but, unless the judge reveals of record that he used such an irrational test of credibility, an upper court can do nothing to correct his error." 175 F.2d 77, 80.

It is unfortunate that the Second Circuit affirmed the court below without rendering an opinion, thereby leaving us to presume what evidence the court below considered to be sufficient (despite the faults with the Government's contentions pointed out in No. 1 of this petition) to support the District Court's finding with respect to the plaintiff's credibility. This appears to be contrary to the U. S. Supreme Court decision in Dickinson vs. U. S., 346 U. S. 389 (1953). In that case, the petitioner sought a ministerial exemption from serving in the Armed Forces. He was convicted for refusing to submit to the local board's induction. The Court of Appeals affirmed the conviction. However, Dickinson's claims were not disputed by any evidence presented to the selective service authorities, nor was any cited by the Court of Appeals. (Emphasis added.) The court stated as follows:

> "The task of the courts in cases such as this is to search the record for some affirmative evidence to support the local board's overt or implicit finding that a registrant has not painted a complete or accurate picture of his activities." 346 U. S. 389, 396.

3. The demands placed by the judiciary on administrative hearing officers regarding the disclosure of the reasoning underlying administrative decision-making, a standard obviously imposed to facilitate judicial review -- e. g. -- to expose and deter arbitrary administration actions --, should also be as stringently required of the lower courts in their fact-finding functions.

As Judge Frank set forth in his opinion in U. S. vs. Forness et al., 125 F. 2d 928 (2d Cir. 1942), cert denied, City of Salamanca vs. U. S., 316 U. S. 694, 62 S. Ct. 1293, 86 L. Ed. 1764 (1942):

> "The judiciary properly holds administrative officers to high standards in the discharge of the fact-finding function. The judiciary should at least measure up to the same standard." 125 F.2d 928, 942.

Section 557(c) (3) (A) of the Administrative Procedure Act sets forth the following standard:

> "(3) The record shall show the ruling on each judgment, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of:
>
> (A) Findings and conclusions and reasons or basis therefor on all material issues of fact, law, or discretion presented on the record." (Emphasis added.)

This high standard, particularly with regard to discretionary matters such as

observation of a witness' demeanor, is rigidly enforced by the courts.

In Day vs. Weinberger, 522 F.2d 1154 (9th Cir. 1975), the claimant brought suit for review of a decision denying an application for determination of disability and for disability insurance benefits under the Social Security Act. In his written report, the Hearing Examiner mentioned opinions rendered by Doctors Moore and Mitchell. He did not, however, set forth any specific reasons for rejecting the two doctors uncontroverted conclusions. The Ninth Circuit held that "such uncontroverted opinions are not binding, but examiner must, if he rejects them, expressly state clear and convincing reasons for his doing so." 522 F.2d 1154, 1156. (Emphasis added.)

Specifically referring to a witness' uncontradicted testimony, as in the case at bar, the Court of Appeals held in NLRB vs. Klaue, 523, F.2d 410 (9th Cir. 1975) that "(W)hile the trier of fact may reject uncontradicted testimony, he may not do so without good reason." Supra at 414.

On another matter concerning a credibility finding, the reviewing court approved the Law Judge's determination rejecting the Company's official's testimony as incredulous, stating as follows:

> "The (Law Judge's) determination on credibility is not to be lightly disturbed,...especially when the finder of fact, as here, provides a written statement of reasons for choosing not to believe the employee's story." NLRB vs. Ramona's Mexican Food Products, Inc., 531, F.2d 390, 393 (9th Cir. 1975)

The Law Judge's decision presented "clearly expressed reasons for his findings of fact..." 531 F.2d 390, 392.

In the case at bar, the Circuit Court's sanctioning of the lower court's excepting itself from the high standards of specificity expected of administrative tribunals, a hypocritical double-standard imposed by the judiciary not demanded of its own tribunals, demands that the Supreme Court exercise its power of supervision.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

.....
GERALD MURRAY

APPENDIX

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARY COX, as Administratrix of the Goods, Chattels and Credits of BOBBY COX, deceased,

plaintiff,

- against -

Administrator of the Veterans Administration, Veterans Administration and United States of America,

defendants.

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75 Civil 3226

ORAL OPINION, FINDINGS OF FACT AND CONCLUSIONS OF LAW

Date entered: December 21st, 1976

EDWARD WEINFELD, D. J. (Orally):

This is an action for wrongful death under the Federal Torts Claims Act, 28 U.S.C. sections 1346(B), 2671, et seq., brought by the sister of, and the administratrix of the estate of, Bobby Cox, who committed suicide on October 12, 1972 in North Carolina.

Plaintiff claims that the Veterans Administration Hospitals in New York City and Fayetteville, North Carolina, were negligent in allowing Cox to sign himself out against medical advice and that the Veterans Administration Hospital in New York City was negligent in later refusing to admit Cox and that such negligence proximately caused his suicide.

Cox served in the Army from 1965 to 1967. After his discharge, he returned to live with his mother in North Carolina. According to his mother, he became restless and depressed

and could not sleep. On September 20, 1968, while he was living in New Jersey, he was brought to the Veterans Administration Hospital in New York City by his sister, the plaintiff. He was diagnosed as undergoing a schizophrenic reaction, acute, undifferentiated type. He was depressed, heard voices, and was afraid people were out to get him.

During his stay at the hospital, he tried repeatedly to leave without permission and on two occasions tried to escape through windows, although his ward was on the 16th floor.

Following these incidents, he underwent a course of shock therapy, which greatly improved his condition. He was released on February 20, 1969, at which time the attending doctor noted that he was "medically competent and able to resume some employment."

Subsequently, on March 2, 1970, Cox was again brought to the New York Veterans Administration Hospital in a "nervous and depressed"

condition. However, there was no indication that he was violent at that time and one doctor specifically noted that Cox was not suicidal. As on his first stay, he made several efforts to leave the hospital. However, he improved rapidly and was released on March 30th. After this hospitalization, Cox obtained employment with the Post Office and lived with his sister, the plaintiff, in Queens.

In July 1972 Cox became depressed and began hearing voices again and quit his job. His sister brought him back to the Veterans Administration Hospital on July 14. He was admitted on July 19. The sister testified that she never heard him threaten to harm himself or her and that the only violent act he committed was ripping a telephone out of a wall. Upon his admission, an examining doctor noted that he had neither suicidal nor homicidal tendencies. As on prior admissions, he occasionally tried to leave the

hospital. Although he continued to hear voices and remained tense and depressed, he did not appear to be as seriously ill as on his previous admissions. On several occasions, he was allowed to leave the hospital with his sister on passes. On August 14, 1972, after returning late from one of those visits, he insisted upon leaving the hospital and finally was allowed to leave against medical advice after signing a statement that he understood he could not be readmitted for ninety days.

Several days later he went to North Carolina to be with his mother. His depression and hallucinations continued and on August 20 his mother brought him to the Veterans Administration Hospital in Fayetteville, North Carolina. Although the mother testified she told the admitting doctor Cox was acting violent, the hospital

records are to the contrary. The record indicates "Mother said he doesn't want to work, thinks he has no friends. She didn't think he has hallucinations, however, and is not violent, but wants to be going to some place all the time." The next day Cox insisted upon leaving the hospital and signed out against medical advice.

Plaintiff claims that on September 19 Cox returned to New York City for medical attention and that she took him to the Veterans Administration Hospital in New York for treatment on the 20th. She testified that they were seen by a clerk who, after retrieving Cox's records, informed them -- that is, the sister and Cox -- that Cox could not be readmitted because of a hospital rule forbidding the readmission of a patient who had signed out against medical advice within the previous ninety days. Plaintiff testified Cox was never seen by a doctor on

this visit. However, Cox's hospital records contain no notation of such a visit, although a record would normally have been made, and in fact his file contained records of other visits on which he was refused admission. Moreover, the Chief of Medical Administrative Services at the hospital testified that in September 1972 the ninety-day exclusion rule was no longer in effect, that every patient who came to the hospital was examined by a nurse and a doctor, and that the decision whether to admit a patient was a medical one always made by a physician.

In order to credit the plaintiff's testimony, the Court would have to believe that on this occasion the staff of the Veterans Administration Hospital failed to follow every step of the prescribed procedure. Based upon the demeanor of witnesses and all relevant evidence, the Court finds that plaintiff has failed to sustain her burden of proof that the decedent Cox, accompanied by

her, sought admission to the Veterans Administration Hospital in New York City on September 20, 1972. In fact, regardless of who has the burden of proof on this issue, the Court finds upon all the evidence that the sister and the decedent did not seek admission to the hospital on that day.

As to the two occasions on which Cox was allowed to sign out of hospitals against medical advice, the defendant is not liable unless the hospital staff knew or should have known at that time that Cox was reasonably likely to commit suicide in the near future. Wright v. State, 31 App. Div. 2d 421, 300 N.Y.S. 2d 153 (1969); Root v. State, 40 N.Y.S. 2d 576 (Ct. Cl. 1943); cf. Dinnerstein v. United States, 486 F.2d 34 (2d Cir. 1973). However, in this case there was no indication either on August 14 or on August 21 that Bobby Cox was reasonably

likely to commit suicide. While it is true he had on occasion been violent during his hospitalization in 1968, there had been no violent episode since then and in fact it appeared that his condition was not as serious then as it had previously been. He did not give any sign to the hospital staff or to his sister of any intent to harm himself. His symptoms were not uncommon for schizophrenics and did not indicate imminent suicide. Although his doctor opposed his discharge at that time and felt further treatment would be preferable, this by itself doesn't mean that he was such an imminent threat to his own safety as to require involuntary commitment. See 38 C.F.R. section13.51(b) (1972); former New York Mental Hygiene Law, sections 72, 78 (McKinney 1971).

Moreover, it is doubtful, to say the least, that plaintiff's discharges in August

1972 were causally related to or were the proximate cause of his suicide over seven weeks later, in the light of the expert testimony that schizophrenics often undergo wide mood swings.

In sum, the plaintiff has failed to prove that the actions of the defendant in allowing Bobby Cox to sign out against medical advice on August 14 and August 21, 1972, were negligent or caused his death. Accordingly, judgment may be rendered in favor of the defendant dismissing thecomplaint upon the merits.

The foregoing shall constitute the Court's Findings of Fact and Conclusions of Law.

Dated: New York, N.Y.
December 20, 1976

EDWARD WEINFELD
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARY COX, as Administratrix of the Goods, Chattels and Credits of Bobby Cox, deceased,

plaintiff,

- against -

ADMINISTRATOR OF THE VETERANS ADMINISTRATION, VETERANS ADMINISTRATION, UNITED STATES OF AMERICA,

defendants.

75 Civil 3226 (EW)

JUDGMENT

The issues in the above entitled action having been brought on regularly for trial, before the Honorable Edward Weinfeld, United States District Judge, on December 9, 10 and 20, 1976, and at the conclusion of the evidence, the Court having dictated its decision, constituting its findings of fact and conclusions of law, into the stenographic record, and the Court having found in favor of the defendants, it is,

ORDERED, ADJUDGED and DECREED: That

Defendants ADMINISTRATOR OF THE VETERANS ADMINISTRATION, VETERANS ADMINISTRATION And UNITED STATES OF AMERICA have judgment against plaintiff MARY COX, as administratrix of the goods, chattels and credits of Bobby Cox, deceased, dismissing the complaint.

Dated: New York, N.Y.
December 21, 1976

s/ Raymond F. Burghardt
Clerk

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York on the 30th day of September, one thousand nine hundred and seventy-seven.

Present:

HONORABLE J. EDWARD LUMBARD

HONORABLE LEONARD P. MOORE

HONORABLE WILDRED FEINBERG

Circuit Judges

MARY COX, as Administratrix of the Goods, Chattels and Credits of Bobby Cox, Deceased,

plaintiff-appellant,

- against -

77-6006

ADMINISTRATOR OF THE VETERANS ADMINISTRATION, VETERANS ADMINISTRATION, UNITED STATES OF AMERICA,

defendants-appellees.

Appeal from the United States District Court for the Southern District of New York

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed on the oral opinion of Judge Weinfeld dat d December 20, 1976 and reproduced in appellant's appendix at pp.19A-26A.

s/
J. EDWARD LUMBARD

s/
LEONARD P. MOORE

s/
WILFRED FEINBERG

Circuit Judges

Standard Form 509 (Rev. August 1954) Bureau of the Budget Circular A-32

CLINICAL RECORD — **DOCTOR'S PROGRESS NOTES** (Sign all notes)

DATE

8/10/72 Joint. I have a pt. I need To get out etc Continues to have difficulty concentrating still hallucinating at intervals; attends group Therapy sessions 2 x wk but is "Silent." Chyanch RN

8/14. 10 am Failed to return from weekend pass no call from patient or family Chyanch RN

8-14-72 1:30 PM A I The aforementioned has signed out of hospital Against Medical Advice Discharged Cannot be readmitted for 90 days. Chyanch RN

WITNESS Dr. Jabitsky MD

It was discharged irregular Jabitsky MD

8/14. Discharged irregular - request of patient after returning from weekend pass Chyanch RN

(Continue on reverse side)

PATIENT'S IDENTIFICATION (For typed or written entries give: Name—last, first, middle, grade, date, hospital or medical facility)

REGISTER NO. | WARD NO.

DOCTOR'S PROGRESS NOTES
Standard Form 509
509-106